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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1944.

No. 167

LOUIS F. HALL & CO., INC.,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit and Brief in Support of Petition.

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LOUIS F. HALL & CO., INC., *Petitioner,* vs. THE UNITED STATES OF AMERICA, *Respondent.*	No. .....

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit and Brief in Support of Petition.

To the Honorable Harlan F. Stone, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

Summary Statement of Matter Involved.

A judgment dismissing petitioner's complaint was entered by the District Court of the United States for the Southern District of New York on February 25, 1944 (R. p. 56). This judgment was affirmed by the United States Circuit Court of Appeals for the Second Circuit on April 9, 1945 (R. p. 65). Petitioner prays that a writ of certiorari issue to review said affirmance.

On September 7, 1937, petitioner filed with the office of the Collector of Internal Revenue, Second District of

New York, an amended claim for refund of $28,669.36 paid as floor stocks taxes under the provisions of the Agricultural Adjustment Act of 1933 (R. p. 15). This claim for refund was sworn to by the president of petitioner corporation on September 2, 1937 and contained the sworn statement that petitioner bore the burden of the taxes, refund of which was claimed. Attached to the claim for refund, as Schedule D thereof (R. p. 20), petitioner submitted a schedule of gross profit percentages for the years 1927 to 1935, inclusive. Said schedule set forth the Sales, Cost of Sales, Gross Profit, and Percentage for each of said years. The sworn statement is also made in said schedule that "as shown by the schedule of gross profit percentages for the years 1927 to 1935 inclusive", claimant "did not shift to its vendees the burden of processing taxes".

After requesting and receiving several extensions of time from the Commissioner of Internal Revenue within which to submit additional evidence in support of the claim for refund, petitioner's attorney, on January 7, 1939 wrote to the Commissioner asking that the claim be withdrawn and marked rejected since the proof would be difficult to establish (R. p. 22). On January 31, 1939 petitioner was notified by the Commissioner that its claim for refund had been rejected on the ground that proof necessary to establish that plaintiff bore the burden of the tax, refund of which was claimed, was not submitted, as required by Section 902 of the Revenue Act of 1936. Said notification also advised the petitioner that by letter from petitioner's attorney, it was requested that the claim be withdrawn and considered rejected (R. p. 25).

On January 29, 1941 petitioner instituted suit in the District Court for the refund of the floor stocks taxes paid as aforesaid (R. p. 2). The respondent moved to dismiss the complaint for failure to state a claim upon which relief could be granted, or in the alternative, for an order granting summary judgment (R. p. 6). The District Court de-

nied the motion for summary judgment and granted the motion to dismiss the complaint for failure to state a claim. The grounds of the dismissal as they appear in the opinion of the District Court are: (1) the reason assigned for like action in *Bear Mill Mfg. Co. Inc.* v. *U. S.*, Civ. 16-48, and (2) by letter of January 7, 1939 petitioner's attorney withdrew the claim and requested that it be rejected (R. p. 37).

The reference concerning *Bear Mill Mfg. Co., Inc.* v. *U. S.*, made by the District Court is to an opinion rendered simultaneously in that case (R. p. 38). In said case a motion similar to that here involved was made by the defendant. The motion for an order dismissing the complaint was granted unless petitioner serve an amended complaint within a fixed period of time setting out the additional evidence, if any, submitted to the Commissioner (R. p. 39), or waiver of such submission by him (R. p. 44); the court's disposition of the motion was based on its holding that where there is no allegation in the complaint that the petitioner submitted evidence to the Commissioner sustaining the claim for refund, then no cause of action has been shown. The court relied on the case of *Samara* v. *U. S.*, 129 F. (2d) 594 (C. C. A. 2d, 1942).

A further opinion in the instant case was rendered by the District Court on February 12, 1944 (R. p. 43), wherein the original decision was adhered to and leave to amend the complaint was denied. Reargument was heard on March 16, 1944 before Hon. Francis G. Caffey, wherein the court stated the real ground of the dismissal of the complaint to be the withdrawal letter of January 7, 1939 written by petitioner's attorney (R. p. 22). The relief prayed for on said reargument was denied.

Judgment was entered on the dismissal of the complaint on February 25, 1944 (R. p. 56). The Circuit Court affirmed the judgment of the District Court (April 9, 1945) on the basis of *Samara* v. *U. S.*, *supra* (R. p. 61).

Jurisdictional Statement.

It is contended that the Supreme Court has jurisdiction to review the judgment here in question under the Act of February 13, 1925 (C. 229; 43 Stat. 938) amending the Judicial Code, Section 240, Title 28 U. S. C. A., Section 347; and under Rule 38, subdivision (5) of the Rules of the Supreme Court.

Questions Presented.

The questions herein presented are:

1. Do Sections 902 and 903 of the Revenue Act of 1936, and the provisions of Regulations 96 require that evidence be submitted to the Commissioner in support of a claim for refund of taxes paid under the Agricultural Adjustment Act of 1933 (48 Stat. 31)?

2. Is the rule in the *Samara* case the correct rule to be followed in actions for refund of taxes paid under said Act?

Reasons Relied on for Allowance of Writ.

1. The decision of the Circuit Court of Appeals for the Second Circuit in the within matter is in direct conflict with the decision of the Circuit Court of Appeals for the Third Circuit in the case of *Bethlehem Baking Co.* v. *U. S.*, 129 F. (2d) 490 (C. C. A. 3rd, 1942). In the course of its opinion in the instant case, the Circuit Court said (R. p. 64):

> "We decline, with deference, to subscribe to the reasoning and result in *Bethlehem Baking Co.* v. *United States,* 3 Cir., 129 F. (2) 490."

The cited case also involved a claim for refund under Title VII of the Revenue Act of 1936 of taxes paid under

the Agricultural Adjustment Act of 1933 (48 Stat. 31) and dealt with the question as to whether a claim for refund submitted to the Commissioner must be substantiated by evidence.

The instant decision is also in direct conflict with the following decisions of the United States District Courts in the Third, Fourth, Fifth and Ninth Circuits:

Hutzler Bros. v. *U. S.*, 33 Fed. Supp. 801 (D. C. Md. 1940);

Bullock's Inc. v. *U. S.*, 43 Fed. Supp. 861 (S. D. Calif. 1942);

Ney, et al. v. *U. S.*, 33 Fed. Supp. 554 (W. D. Va. 1940);

Joe Hanna v. *U. S.*, 27 AFTR 1135 (W. D. Texas 1940);

Bricker Baking Co. v. *Rothensies, et al.*, 46 Fed. Supp. 742 (E. D. Pa. 1942).

2. The decision of the Circuit Court of Appeals for the Second Circuit in the within matter is likewise in direct conflict with the following decisions of the Circuit Court of Appeals for the Fifth and Sixth Circuits:

Snead, Collector v. *F. H. Elmore*, 59 F. (2d) 312 (C. C. A. 5th, 1932) (26 U. S. C. A. 156; Reg. 45, Art. 1036);

Paul Jones & Co. v. *Lucas*, 33 F. (2d) 907 (D. C. Ky. 1929) Affirmed 64 F. (2d) 1016 (C. C. A. 6th, 1933) (Rev. Act of 1926, Sec. 1113[a]; Reg. 69, Art. 1304).

These cases involved claims for refund under other but similar statutes on the question as to whether a claim for refund submitted to the Commissioner must be substantiated by evidence. The authority for analogy to the

latter is found in the Congressional Committee Report on the Revenue Act of 1936 (C. B. 1939-1, Part 2, pp. 699-700).

The instant decision is also in conflict with the following decision of the United States District Court in the Sixth Circuit involving the same issue:

Fidelity & Columbia Trust Co. v. *Lucas*, 7 F. (2d) 146 (D. C. Ky. 1925).

3. The Circuit Court of Appeals for the Second Circuit has decided an important and substantial question of federal law which has not been and should be settled by the Supreme Court.

The *Samara* case, upon which the Circuit Court herein relied in affirming the District Court's decision, was followed by the Tax Court of the United States in *The Blum Folding Paper Box Company, Inc.* v. *Commissioner*, 4 TC No. 96 (promulgated February 19, 1945). That case involved an application for relief from excess profits taxes, under Section 722 of the Internal Revenue Code. The Tax Court found that "the statute and regulations applicable to the filing and disposition of applications for relief under Section 722 add up to similarity with those pertaining to the refund of processing and other taxes." The Tax Court in the cited case followed the *Samara* case, holding that it would not consider certain supplemental data at the trial which had not been submitted to the Commissioner prior to his disallowance of the claim.

Thus, the doctrine of the *Samara* case, enunciated as to processing taxes, the levy of which has long been held unconstitutional by the Supreme Court of the United States (*Butler* v. *U. S.*, 297 U. S. 1, 1936) has now been extended to cases involving excess profits taxes. The question involved in the *Samara* case, as in the instant case, that is, the question of the necessity of submission of evidence to the Commissioner and of the quantum of proof to be submitted, is one common to *any* claim for refund of *any*

type of taxes. As shown here, it has arisen in excess profits tax claims and will undoubtedly arise in numerous other tax claims. Said question therefore is an important question of federal law. Whether the *Samara* rule should be followed in cases of refund of taxes, or whether the rule of the Third Circuit should be followed, is the question which should be settled by the Supreme Court. It is submitted that the *Samara* case should not be further relied on unless sanctioned by the Supreme Court.

Further, the Circuit Court herein pointed out that three other cases (in the Fifth and Seventh Circuits), *Weiss* v. *U. S.*, 135 F. (2) 889, *Jaubert Bros. Inc.* v. *U. S.*, 141 F. (2) 206, and *New York Handkerchief Mfg. Co.* v. *U. S.*, 142 F. (2) 111, were in accord, although in those cases, the dismissals were for lack of jurisdiction. However, the basis for the dismissal in this case, as in the *Samara* case, was on the *merits*, the Circuit Court holding that the District Court had jurisdiction (R. p. 63). The so-called "holdings in accord" with the *Samara* doctrine are in reality not in accord, because there the District Courts were held never to have obtained *jurisdiction* of the actions on the stated ground that failure to submit the evidence to the Commissioner was fatal. Whether the failure to submit any evidence or sufficient evidence to the Commissioner in support of the claim for refund results in ousting the District Court of jurisdiction of an action for the refund, is an important question of federal law which should be settled by the Supreme Court.

Also, there are scores of cases such as the instant one still pending in the Federal District Courts. Recovery will be denied claimants in some circuits for the same reason that recovery was here denied, whereas, other claimants in similar factual situations, but in different circuits, will recover and have recovered. *If certiorari is here granted and the ultimate guiding rule in this type of case is announced by the Supreme Court, there will be uni-*

formity of decision in the several circuits. Thus, there will be no advantage afforded to some claimants solely by reason of their geographical location; further, many claimants will then be in a position to determine whether to proceed with or discontinue their actions, with a resultant saving of time and expense for the courts, counsel and litigants.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the Circuit Court of Appeals for the Second Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of the said Circuit Court had in the case entitled on its docket *Louis F. Hall & Co., Inc., Appellant* v. *United States of America, Appellee,* to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court be reversed by this Court, and for such further relief as this Court may deem proper.

Dated: June ....., 1945.

DAVID J. SHORB,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION.

Opinions of Courts Below.

The opinion of the Circuit Court of Appeals for the Second Circuit (R. pp. 61-64) was rendered on March 23, 1945. The opinions of the District Court were rendered by the District Court for the Southern District of New York on December 21, 1943 and February 12, 1944. Judgment was rendered by said District Court (R. pp. 56, 57) on February 25, 1944, and by the aforesaid Circuit Court (R. p. 65) on April 9, 1945.

Jurisdiction.

1. The date of the judgment to be reviewed is April 9, 1945; the petition for writ of certiorari is being presented before July 9, 1945.

2. The statutory provision which is believed to sustain the jurisdiction of this court is the Act of February 13, 1925 (C. 229; 43 Stat. 938) amending the Judicial Code, Section 240, Title 28 U. S. C. A. Section 347, and Rule 38, subdivision (5) of the Rules of the Supreme Court.

3. The nature of the within case and the rulings of the Circuit Court are such as to bring the case within said jurisdictional provisions.

The case involves an important question of federal law which has not been and should be settled by the Supreme Court. The action was brought for the refund of floor stocks taxes paid under the provisions of the Agricultural Adjustment Act of 1933 (48 Stat. 31) (R. p. 2). A claim for refund of said taxes, which had been filed with the

Commissioner of Internal Revenue under Title VII of the Revenue Act of 1936 (49 Stat. 1648) and Regulations 96 (R. p. 15) was rejected by him (R. p. 25). The Circuit Court affirmed the judgment of the District Court dismissing plaintiff's complaint on the basis of *Samara* v. *U. S.*, 129 F. (2) 594, and held that there was no error in said dismissal, since plaintiff had failed to present sufficient evidence to the Commissioner in support of its claim for refund; that under the authority of the *Samara* case, the evidence submitted to the Commissioner must be sufficient to prove the cause of action alleged in the suit (R. p. 63).

Said ruling of the Circuit Court is in direct conflict with a decision of the Circuit Court of Appeals for the Third Circuit and with decisions of Federal Courts in the Third, Fourth, Fifth, Sixth and Ninth Circuits. Said decisions are listed in paragraph "4", *infra.*

4. The cases believed to sustain said jurisdiction are as follows:

Bethlehem Baking Co. v. *U. S.*, 129 F. (2d) 490 (C. C. A. 3rd, 1942);
Hutzler Bros. v. *U. S.*, 33 Fed. Supp. 801 (D. C. Md. 1940);
Bullock's Inc. v. *U. S.*, 43 Fed. Supp. 861 (S. D. Calif. 1942);
Ney, et al. v. *U. S.*, 33 Fed. Supp. 554 (W. D. Va. 1940);
Joe Hanna v. *U. S.*, 27 AFTR 1135 (W. D. Texas 1940);
Bricker Baking Co. v. *Rothensies, et al.*, 46 Fed. Supp. 742 (E. D. Pa. 1942);
Snead, Collector v. *F. H. Elmore*, 59 F. (2d) 312 (C. C. A. 5th, 1932) (26 U. S. C. A. 156; Reg. 45, Art. 1036);

Paul Jones & Co. v. *Lucas,* 33 F. (2d) 907 (D. C. Ky. 1929), affirmed 64 F. (2d) 1016 (C. C. A. 6th, 1933) (Revenue Act of 1926, Sec. 1113(a); Reg. 69, Art. 1304);

Fidelity & Columbia Trust Co. v. *Lucas,* 7 F. (2d) 146 D. C. Ky. 1925).

5. The questions here involved are substantial for the reason that many hundreds of cases for the refund of taxes paid under the Agricultural Adjustment Act of 1933, involving millions of dollars, are now pending in the Federal Courts; the question as to the construction of the Revenue Act of 1936 and Regulations 96 concerning the necessity for submission of evidence to the Commissioner is involved in a great many of said cases.

The questions here involved are also substantial for the reason that the question as to the necessity of the submission of evidence to the Commissioner and as to the quantum of proof required to be submitted to him is involved in claims for refund of other types of taxes. (See *The Blum Folding Paper Box Company, Inc.* v. *Commissioner, supra*).

The question as to the jurisdiction of the District Court over the action is also important and substantial.

Statement of Case.

This has already been stated in the preceding petition in "Summary Statement of Matter Involved" (pp. 1-3) which is hereby adopted and made a part of this brief.

Specification of Errors.

The Circuit Court erred in holding that:

1. Sections 902 and 903 of the Revenue Act of 1936 and Regulations 96 require that evidence be submitted to the Commissioner in support of a claim for refund.

2. The rule in the *Samara* case was the correct rule to be followed in actions for refunds of taxes paid under said Act.

ARGUMENT.

Summary of Argument.

Certiorari should be granted for the reasons that:

POINT I.

The Circuit Court's decision is in direct conflict with decisions of the Third Circuit and District Courts in other circuits, on the question as to whether Sections 902 and 903 of the Revenue Act of 1936 and Regulations 96 require the submission of evidence to the Commissioner of Internal Revenue in support of a claim for refund of taxes paid under the Agricultural Adjustment Act of 1933.

POINT II.

The Circuit Court's decision is in direct conflict with decisions of the Fifth and Sixth Circuits, involving similar statutes and regulations, on the question as to whether the submission of evidence to the Commissioner of Internal Revenue is required in support of a claim for refund.

POINT III.

An important and substantial question of Federal Law is involved which has not been and should be settled by the Supreme Court.

POINT I.

The Circuit Court's decision is in direct conflict with decisions of the Third Circuit and District Courts in other circuits, on the question as to whether Sections 902 and 903 of the Revenue Act of 1936 and Regulations 96 require the submission of evidence to the Commissioner of Internal Revenue in support of a claim for refund of taxes paid under the Agricultural Adjustment Act of 1933.

In *Bethlehem Baking Co.* v. *U. S.*, 129 F. (2d) 490 (C. C. A. 3rd, 1942), the claimant submitted to the Commissioner, in support of its claim for refund filed with the Commissioner, an analysis of costs for the periods prior to and subsequent to the effective date of the tax and for the period during which the tax was in effect. Upon rejection of its claim for refund, the claimant commenced suit for the refund of the taxes in the District Court. Upon appeal from a judgment for the plaintiff, the Circuit Court thus stated the question involved:

> "The principal question in this case is whether the matter submitted by the plaintiff taxpayer to the Commissioner of Internal Revenue in support of a claim for refund of taxes paid under the Agricultural Adjustment Act of 1933 complied sufficiently with the requirements of Title VII, Section 902, of the Revenue Act of 1936, c. 690, 49 Stat. 1648 (providing for refund of such taxes), so as to preserve the plaintiff's standing to sue for the refund following the Commissioner's disallowance of the claim."

The Court in the cited case ruled that all evidence relied upon by the taxpayer did not have to be submitted to the Commisisoner. It held:

> "In Section 903 of the Revenue Act of 1936 there is the additional provision that 'All evidence relied upon in support of such claim shall be clearly set forth under oath' * * * *Was the requirement in Section 903 intended to impart finality to the decisions of the Commissioner* with respect to claims for refund by * * * *withdrawing jurisdiction from the courts in such regard because the Commissioner was not satisfied that all evidence relied upon in support of the claim had been clearly set forth under oath? We think not.* Section 903 appears to be in furtherance of the administration of Section 902. It indicates no legislative intent to give greater finality to the decisions of the administrative officer than did Section 902 * * * While it is the duty of a claimant to present a formal claim and to endeavor by sufficient proof to satisfy the Commissioner as to its merits, *he should not be barred from presenting further evidence in support of the same claim in a suit for refund after rejection by the Commissioner.* See *Hutzler Bros. Co.* v. *United States,* 33 F. Supp. 801, 803 (D. Md.) * * *
>
> In the instant case, which was a suit for refund, the matter was for the satisfaction of the court on the basis of the relevant proofs adduced at trial (See Section 902)." (Italics ours.)

That a direct and irreconcilable conflict exists between the Circuit Court of Appeals for the Third Circuit and the Circuit Court of Appeals for the Second Circuit was acknowledged by the Circuit Court of Appeals for the Second Circuit in its opinion in the instant case. It said (R. p. 64):

> "We decline, with deference to subscribe to the reasoning and result in *Bethlehem Baking Co.* v. *U. S.,* 3 Cir., 129 F. (2) 490."

It is submitted that the existence of such a conflict is a sufficient basis for the granting of certiorari. It was so held by the Supreme Court of the United States in the case of *Commissioner* v. *The Scottish American Investment Company, Ltd.*, 323 U. S. 119 (1944). In that case, the question was whether the taxpayer maintained an office or place of business within the United States. The Tax Court had held that the taxpayer had a place of business in the United States. The Commissioner appealed from said decision to the Circuit Court of Appeals for the Third Circuit as to two of the taxable years, and to the Circuit Court of Appeals for the Fourth Circuit as to two other of the taxable years (returns having been filed in different Collector's offices). The Circuit Court of Appeals for the Third Circuit reversed the Tax Court's decision, while the Circuit Court of Appeals for the Fourth Circuit affirmed said decision. The Supreme Court granted certiorari, because, as it said, while the Fourth Circuit affirmed the Tax Court's decision "the Circuit Court of Appeals for the Third Circuit, considering the identical facts and substantially the same statutes and regulations, held that the taxpayers did not have an office or place of business within the United States during 1938 and 1939; the decision of the Tax Court as to those years was accordingly reversed (142 F., 2d, 401). *The irreconcilable conflict between the two Courts below led us to grant certiorari.*" (Italics ours.)

A comparison between the *Bethlehem Baking Co.* case and the instant case, as to their facts, and statute and regulations involved, discloses that identical statutes and regulations are involved and substantially similar facts. Their holdings being in direct conflict, under the authority of the cited case, certiorari should be granted here. The statute and regulations involved in the instant case and the *Bethlehem Baking Co.* case (Revenue

Act of 1936, Sections 902 and 903, and Regulations 96) are identical. The facts in each are substantially the same. In the instant case, petitioner had submitted to the Commissioner a schedule of gross sales, cost of sales and gross profits for the years 1927 through 1935 inclusive (periods similar to those submitted by the claimant in the *Bethlehem* case). In the *Bethlehem Baking Co.* case, claimant submitted an analysis of costs for said periods. Yet, considering identical statutes and regulations, and substantially similar facts, both Courts came to directly conflicting conclusions. The Circuit Court of Appeals for the Third Circuit held that the claimant "should not be barred from presenting further evidence in support of the same claim in a suit for refund after rejection by the Commissioner," while the Circuit Court of Appeals for the Second Circuit held that "evidence admissible at the trial was confined to that presented to the Commissioner" (R. p. 63). Such an irreconcilable conflict between said two Courts, it is submitted, requires the granting of certiorari under the authority of *Commissioner* v. *The Scottish American Investment Company, Ltd., supra.*

In *Hutzler Bros.* v. *U. S.*, 33 Fed. Supp. 801 (D. C. Md. 1940) cited by the Circuit Court in the *Bethlehem* case, the government's contention was similar to that made in the instant case. It is thus stated by the Court:

> "It is contended that by this provision the plaintiff was required to set forth under oath all of the evidence upon which it relied as a condition precedent to the allowance of any claim for refund, and that no suit may be maintained in this Court by plaintiff unless it alleges,—as it did not do,—as an essential part of its right of action, that it had presented to the Commissioner all the available evidence bearing upon its right to refund * * * "

The Court held as to said contention:

> "• • • We find this position of the Government to be without merit. *Where a claim has been rejected by the Commissioner and such a fact is alleged in the complaint, no further allegation is necessary for the maintenance of a suit for refund; and in such suit a plaintiff is not limited to the same evidence produced before the Commissioner. The intent of the statute, reasonably interpreted from the language employed and above quoted, is to bar consideration of claims merely on informal statements or memoranda,* and to surround the presentation of claims with full verification, *but it is not intended that a claimant who produces before the Commissioner certain evidence is forever thereafter barred from introducing further evidence in resorting to a Court proceeding for refund—a right which is expressly given by Section 905 of the Act.*" (Italics ours.)

To the same effect as the two cited cases, see:

Bullock's Inc. v. *U. S.*, 43 Fed. Supp. 861 (S. D. Calif. 1941);

Ney, et al. v. *U. S.*, 33 Fed. Supp. 554 (W. D. Va. 1940);

Joe Hanna v. *U. S.*, 27 AFTR 1135 (W. D. Texas 1940);

Bricker Baking Co. v. *Rothensies, et al.*, 46 Fed. Supp. 742 (E. D. Pa. 1942).

The Circuit Court in the instant case held that petitioner could not succeed in its appeal because of the effect of the *Samara* case, in which it was held by the same Court that the evidence admissible at the trial was confined to that presented to the Commissioner. This holding, it is submitted, is in direct conflict with the decisions above set forth.

POINT II.

The Circuit Court's decision is in direct conflict with decisions of the Fifth and Sixth Circuits, involving similar statutes and regulations, on the question as to whether the submission of evidence to the Commissioner of Internal Revenue is required in support of a claim for refund.

Petitioner's authority for reference to other statutes and regulations concerning other claims for refund is found in the Congressional Committee Report on the Revenue Act of 1936 (C. B. 1939-1, Part 2). The purpose of said statute is thus stated (pp. 699, 700):

> "The revision of the provisions of section 21 (d) contained in Title VII adheres to the fundamental principle of equity applicable in respect to claims for refund, namely, that the claimant secure a refund only with respect to the amount of tax of which he bore the economic burden. However, the procedure in the handling of these claims has been modified so as to diminish in so far as possible the administrative burden involved in passing on them. *The greater number of claims which may be filed relate to claims for compensation taxes and floor stock taxes. In these cases the issue of fact as to whether or not the claimant bore the economic burden of the tax will be relatively simple. The bill therefore proposes that such claims shall be handled in the same manner as any other claims for refund under existing law.* The claimant will merely present his claim to the Bureau of Internal Revenue, and it will be passed on without formal hearing. If the claimant is dissatisfied with the decision of the Commissioner, he will then have recourse to the district court or the Court of Claims." (Italics ours.)

The manner in which "any other claims for refund under existing law" was handled is illustrated in the following cases; petitioner's interpretation of Sections 902 and 903 of the Revenue Act of 1936, here involved, is supported by these cases which place a similar interpretation on similar statutes concerning "other claims for refund".

In *Paul Jones & Co.* v. *Lucas*, 33 F. (2d) 907 (D. C. Ky. 1929), affirmed 64 F. (2d) 1016, the Revenue Act of 1926 (Sec. 1113[a]) and Regulations 69 (Art. 1304) were involved. The Court held:

> "The provision contained in Article 1304 of Treasury Regulations 69, *supra*, to the effect that 'all facts relied upon in support of the claim should be clearly set forth in detail under oath' is a proper exercise of the power delegated to the Commissioner of Internal Revenue to make rules and regulations for the enforcement of the act in question * * *."
>
> "Fairly construed, the language of the regulations just quoted *does not require all the evidence upon which a taxpayer relies to be presented to the Commissioner.* It simply requires the fact or reasons for the alleged illegality of the tax to be presented to the Commissioner, leaving the taxpayer entirely free, *if he fails to secure relief at the hands of the Commissioner, to adduce, in a suit in court, new and additional evidence in support of the fact or reasons relied upon to establish the illegality of the tax.*" (Italics ours.)

In *Snead, Collector* v. *F. H. Elmore*, 59 F. (2d) 312 (C. C. A. 5th, 1932), the statute and regulations involved were 26 U. S. C. A. 156 and Reg. 45, Art. 1036. The Court stated:

> "The regulations then in force, No. 45, Art. 1036, require that 'all the facts relied upon in support of the claim shall be clearly set forth under oath'. * * * *This does not mean that the claim for refund must have contained all the evidence or argument* that is offered in the suit, but it must have indicated not only the amount claimed but the substantial grounds on which illegality is asserted and the general facts supporting the grounds * * *."

In *Fidelity & Columbia Trust Co.* v. *Lucas*, 7 F. (2d) 146 (D. C. Ky. 1925), the Court stated as follows:

> "* * * in suits to recover internal revenue taxes erroneousy or illegally assessed and collected, * * * Congress has not committed the final decision in these matters to the Commissioner of Internal Revenue, or to any other executive or ministerial officer. On the contrary, *jurisdiction to finally determine such matter is conferred upon the Judicial Dept.*, provided the taxpayer has first taken all the steps required by law to be taken before appealing to the court. * * *
>
> "In view of these statutory provisions (Section 3226 of the Revised Statutes, among others) and the authorities referred to, *this court is satisfied that it has jurisdiction to try the question of the plaintiff's tax liability in this case de novo, without in any way being limited to the evidence heard by the Commissioner, and unprejudiced by any action he may have taken in the matter.* * * *" (Italics ours.)

Sections 902 and 903 of the Revenue Act of 1936 and Regulations 96 (See appendix) involved in the in-

stant case, are similar in their requirements to the statutes and regulations involved in *Paul Jones & Co.* v. *Lucas* and *Snead, Collector* v. *F. H. Elmore, supra.* It was the intent of Congress in enacting the Revenue Act of 1936, as set out in the Congressional Committee Report, *supra,* that claims for refund thereunder "shall be handled in the same manner as any other claims for refund under existing law". The above cited cases illustrate how "claims for refund under existing law" were handled. The Circuit Court's decision herein, it is submitted, defeats said intent of Congress, said decision being in direct conflict with the cited cases. Certiorari should be granted because of this direct conflict between the Second Circuit and the Fifth and Sixth Circuits.

POINT III.

An important and substantial question of Federal Law is involved which has not been and should be settled by the Supreme Court.

The question of the construction of Sections 902 and 903 of the Revenue Act of 1936 has not been settled by the Supreme Court. As shown above, the Circuit Courts in various circuits are in direct conflict as to its construction, said Courts differing widely on the questions as to whether the statute requires that any evidence be submitted to the Commissioner in support of a claim for refund, as to how much evidence must be submitted to him, and as to whether a claimant is barred, in an action for refund of said taxes, from submitting evidence to the trial court which had not been previously submitted to the Commissioner.

The Circuit Court in the instant case construed said statute as requiring that evidence be submitted to the

Commissioner, that enough evidence be submitted to him to prove the claim for refund, and that no additional evidence could be later presented to the trial court. Said construction of the statute was made by that Court, first, in the *Samara* case, upon which said Court relied in affirming the District Court's judgment against the petitioner in the instant case. As appears in Points I and II, *supra,* the Circuit Courts of the Third, Fifth and Sixth Circuits construction of said statute is directly contrary.

Petitioner contends that the aforesaid questions on statutory construction are important and substantial and should be settled by the Supreme Court. In support of its said contention, petitioner cites the case of *The Blum Paper Box Folding Co. Inc.* v. *Commissioner*, 4 TC No. 96 (promulgated February 19, 1945). In that case, the Tax Court held against the taxpayer on the basis of the *Samara* case. There, the Commissioner moved to dismiss taxpayer's proceeding, which was brought to review the Commissioner's disallowance of its application for relief under Section 722 of the Internal Revenue Code from excess profits taxes. The basis of the Commissioner's motion was that practically no facts to support the application for relief were submitted to the Commissioner, that "the petitioner will never be permitted to prove facts excepting those stated in the applications," and that therefore the proceedings should be dismissed. The Tax Court found that the statute applicable to applications for relief under Section 722 "add up to similarity" with the statute applicable to refunds of processing and other taxes (involved in the instant case). It dismissed the proceeding, relying on the *Samara* case, following the principle there established that the Court would not consider evidence which was offered to the Commissioner for the first time after he had disallowed the claim. The Court held:

> "It is clear here that the petitioner can never get relief in this Court in the present proceeding because it will never be able to prove facts sufficient to support its claim and, therefore, the proceeding should be dismissed at this time."

Thus, the novel doctrine and the newly laid down principle of the *Samara* case and the instant case, enunciated as to processing taxes, with which other Circuit Courts are not in accord, has been extended to cases involving other tax refunds. Further this principle could be extended to *any* claim for refund of *any* type of tax filed with the Commissioner. The procedural provisions of the Revenue Act of 1936 covering processing and floor stocks tax refunds are similar in language to almost all statutes which set forth the procedure for filing a claim for refund of any Federal taxes with the Commissioner. The *Samara* principle is being applied extensively by the Commissioner affecting practically all claimants of refunds. Petitioner contends however that said principle, with which the various Circuit Courts are in direct conflict, should not be sanctified as the controlling law until the Supreme Court rules thereon. Because of its application to cases involving other types of taxes, such as *The Blum Folding Paper Box Co. Inc.* v. *Commissioner, supra,* the principle and the questions involved have become very important and substantial, and should be settled by the Supreme Court. Denial of certiorari will put uncertainty and hardship on this taxpayer and others similarly situated, since the doctrine is novel and the general opinion of taxpayers and tax practitioners, before the *Samara* case, was to the contrary. The rule requires that evidence not submitted to the Commissioner before rejection of the claim, be excluded on the trial. This is a fundamental change in Federal trial practice and calls for direct review by the Supreme Court.

A further important question involved is that of jurisdiction. The Circuit Court in its opinon in the instant case cited three cases from the Fifth and Seventh Circuits (*Weiss* v. *United States,* 135 F. [2] 889; *Jaubert Bros. Inc.* v. *United States,* 141 F. [2] 206; and *New York Handkerchief Mfg. Co.* v. *United States,* 142 F. [2] 111) as being in accord with its holding in the *Samara* case. Those Courts held, however, that failure to submit evidence to the Commissioner deprives the District Court of jurisdiction of the action for refund. The Circuit Court for the Second Circuit in the *Samara* case held that submission of evidence to the Commissioner was not a condition precedent to the jurisdiction of the District Court, and overruled the District Court on its holding that the Court had no jurisdiction. So that the holdings, cited as in accord with the *Samara* case, are in reality, not in accord. The question is still in conflict as to the effect on the District Court's jurisdiction of the failure to submit evidence to the Commissioner. This question, it is submitted, is an important and substantial one and should be settled by the Supreme Court.

Also, there are many hundreds of cases for refund of Agricultural Adjustment Act taxes, such as the instant one, still pending in the Federal Courts. Recovery will be denied claimants in some circuits for the same reason that recovery was here denied, whereas, other claimants in similar factual situations, but in different circuits, will recover. If certiorari is here granted and the ultimate guiding rule in this type of case is announced by the Supreme Court, there will be uniformity of decision in the several circuits; thus, there will be no advantage afforded to some claimants solely by reason of their geographical location. Further, many claimants will then be in a position to determine whether to proceed with or discontinue their actions, with a resultant saving of time and expense for the Courts, counsel and litigants.

It is therefore respectfully submitted that this case is one calling for an exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter revewing and reversing said decision.

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Counsel for Petitioner.

KENNETH CARROAD,
B. R. DREYER,
Of Counsel.

APPENDIX.

Section 902 of the Revenue Act of 1936, as Amended.

No refund shall be made or allowed, in pursuance of Court decisions or otherwise, of any amount paid by or collected from any claimant as tax under the Agricultural Adjustment Act, unless the claimant establishes to the satisfaction of the Commissioner in accordance with regulations prescribed by him, with the approval of the Secretary, or to the satisfaction of the Trial Court, or the Board of Review in cases provided for under Section 906, as the case may be——

(a) That he bore the burden of such amount and has not been relieved thereof nor reimbursed therefor nor shifted such burden, directly or indirectly, (1) through inclusion of such amount by the claimant, or by any persons directly or indirectly under his control or having control over him or subject to the same common control, in the price of any article with respect to which a tax was imposed under the provisions of such Act, or in the price of any article processed from any commodity with respect to which a tax was imposed under such Act, or in any charge or fee for services or processing; (2) through reduction of the price paid for any such commodity; or (3) in any manner whatsoever; and that no understanding or agreement, written or oral exists whereby he may be relieved of the burden of such amount, be reimbursed therefor, or may shift the burden thereof; or

(b) That he has repaid unconditionally such amount to his vendee (1) who bore the burden thereof, (2) who has not been relieved thereof nor reimbursed therefor, nor shifted such burden, directly or indirectly, and (3) who is

not entitled to receive any reimbursement therefor from any other source, or to be relieved of such burden in any manner whatsoever.

Section 903 of the Revenue Act of 1936, as Amended.

No refund shall be made or allowed of any amount paid by or collected from any person as tax under the Agricultural Adjustment Act unless, after the enactment of this Act, and prior to January 1, 1940,[1] a claim for refund has been filed by such person in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. All evidence relied upon in support of such claim shall be clearly set forth under oath. The Commissioner is authorized to prescribe by regulations, with the approval of the Secretary, the number of claims which may be filed by any person with respect to the total amount paid by or collected from such person as tax under the Agricultural Adjustment Act: and such regulations may require that claims for refund of processing taxes with respect to any commodity or group of commodities shall cover the entire period during which such person paid such processing taxes.

Articles 202, 204, 301 and 305 of Regulations 96.

Article 202. Facts and evidence in support of claim.—Each claim shall set forth in detail and under oath each ground upon which the refund is claimed. It is incumbent upon the claimant to prepare a true and complete claim and to substantiate by clear and convincing evidence all of the facts necessary to establish his claim to the satisfaction of the Commissioner; failure to do so will result in the disallowance of the claim.

The provisions of these regulations require that certain specific facts shall be stated in support of any claim

1. "January 1, 1940" substituted for "July 1, 1937" by Revenue Act of 1939.

for refund. The claimant is privileged to prove those facts in any manner available to him and to submit such evidence to that end as he may desire.

Article 204. Conditions are to tax burden with respect to amount of refund allowable.—A refund may be allowed to the person who paid the tax, only of that amount paid as tax as to which the claimant establishes to the satisfaction of the Commissioner (1) that he bore the burden of such amount and has not been, or may not be, relieved thereof nor reimbursed therefor, and has not shifted such burden, directly or indirectly, through or by any of the means set forth in subsection (a) of Section 902 of the Act; or (2) that he has repaid such amount unconditionally to his vendee who bore the burden thereof, as provided in subsection (b) of Section 902 of the Act.

Article 301. Claim form prescribed.—Claims for refund of amounts paid as floor stocks tax shall be filed on P. T. Form 76. (See Chapter II for general provisions relating to all claims.)

Article 305. Facts and evidence respecting tax burden.—If the claim involves floor stocks taxes paid with respect to more than one commodity, the facts and evidence as to the amount of tax burden borne with respect to articles made from each such commodity shall be set out separately; *e. g.*, if the claim is for refund of amounts paid as cotton floor stocks tax and as wheat floor stocks tax, the facts and evidence concerning the tax burden with respect to cotton articles shall be set forth separately from the like facts and evidence with respect to wheat articles. (See Article 202.)

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656186—45

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 167

LOUIS F. HALL & CO., INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

The opinion of the Circuit Court of Appeals (R. 61–64) is reported at 148 F. 2d 274. The opinions of the District Court (R. 37, 38–39, 43–44) are not reported.

JURISDICTION

The judgment of the Circuit Court of Appeals (R. 65) was entered on April 9, 1945. The petition for a writ of certiorari was filed on June 25, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Petitioner filed a claim for refund of floor-stock taxes paid under the Agricultural Adjustment Act of 1933. Except for a tabulation showing the ratio between the petitioner's gross sales and gross profits for the years 1927 to 1935, inclusive, the claim contained no evidence that the burden of the tax was not shifted. After the petitioner requested that the claim be withdrawn and marked rejected, the Commissioner rejected the claim and petitioner instituted a suit for refund. The question is whether, in view of the requirements of Section 902 and 903 of the Revenue Act of 1936, the courts below erred in denying recovery to the petitioner on either of the following two grounds:

A. That the court was without jurisdiction to entertain the action;

B. That the admissible evidence was insufficient to establish that petitioner bore the burden of the tax.

STATUTE AND REGULATIONS INVOLVED

The applicable provisions of the statute and regulations are printed in the Appendix, *infra*, pp. 10–13.

STATEMENT

This is a suit to recover $28,669.36, paid as floor stocks tax during 1933 under the Agricultural Adjustment Act, c. 25, 48 Stat. 31 (R. 2–4), the taxing provisions of which were held unconstitu-

tional in *United States* v. *Butler,* 297 U. S. 1, and *Rickert Rice Mills* v. *Fontenot,* 297 U. S. 110. The suit is based upon an amended claim for refund (R. 16–20) which was filed on or about September 7, 1937 (R. 3, 61), pursuant to the provisions of Title VII of the Revenue Act of 1936, and which was rejected by the Commissioner of Internal Revenue on January 31, 1939 (R. 25). The amended claim was filed on the official forms prescribed by the appropriate Treasury Regulations, but it did not contain all of the information called for by the Regulations and the instructions (R. 19) printed on the official form. The only information submitted with the claim, other than a statement of the dates and amounts of taxes paid (R. 17), was a tabulation showing the ratio between the taxpayer's gross sales and its gross profits for the years 1927 to 1935, inclusive (R. 20). Under date of January 7, 1939, counsel for the petitioner wrote a letter to the Commissioner, in which the claims of a number of other clients were mentioned, stating that (R. 22):

> We write to inform you that the following P. T. Form 76 cases are withdrawn:
>
> * * * * *
>
> C–18182 Louis F. Hall & Co., Inc. 74 Leonard Street, New York, N. Y.
>
> * * * * *
>
> In our opinion, proof in these cases would be very difficult to establish. Accordingly,

> we are requesting that the foregoing claims be withdrawn and marked rejected.
>
> * * * * *

Under date of January 31, 1939, the Commissioner rejected petitioner's claim for refund in a letter which read in part as follows (R. 25):

> The proof necessary to establish that you bore the burden of the tax for which you claim refund, as required by the provision of law referred to above, has not been submitted. In a letter from Kenneth Carroad, dated January 7, 1939, it is requested that your claim be withdrawn and considered rejected, as it is believed that it would be very difficult to substantiate the facts alleged with respect thereto.
>
> Accordingly, your claim is hereby rejected in full.

The Government filed an answer (R. 5–6) denying the allegations of the complaint, except that the refund claim had been filed, and pleaded as a special defense that the District Court lacked jurisdiction because (1) the claim for refund was insufficient, and (2) the claim for refund had been withdrawn. The Government later moved to dismiss the complaint (R. 6–7) on the ground that it failed to state "a claim upon which relief can be granted, or, in the alternative, for an order granting summary judgment in favor of the defendant and against the plaintiff, together with costs." Affidavits in opposition to the motion were filed (R. 27–36),

but an order of dismissal was entered on December 21, 1943 (R. 37), based upon the same court's decision in a similar case (R. 38–39). A motion for reargument (R. 45) was denied (R. 51). Under date of February 24, 1944, the District Court entered an order granting the Government's motion to dismiss and denying the motion for summary judgment (R. 56–57). The Circuit Court of Appeals affirmed the judgment of the District Court (R. 65), but held that the complaint should have been dismissed on the merits (R. 64).

ARGUMENT

Precisely the same issues are involved in this case as were involved in *Samara* v. *United States*, 129 F. 2d 594 (C. C. A. 2d), certiorari denied, 317 U. S. 686. Precisely the same arguments are advanced in support of the petition for a writ of certiorari in this case as were advanced in the *Samara* case, and precisely the same cases are relied on as being in conflict with the decision below as were relied on in the *Samara* case. See petition for certiorari, No. 489, October Term 1942. We submit that there is no more reason for the Court to grant certiorari in this case than there was in the *Samara* case, and indeed, as we shall show, there is even less reason in this case.

1. The decision below, like the decision in the *Samara* case, is not necessarily in conflict with

the decision of the Circuit Court of Appeals for the Third Circuit in *Bethlehem Baking Co.* v. *United States,* 129 F. 2d 490. The opinions in that case show clearly that the taxpayer there made a greater effort than did the petitioner here to comply with the Commissioner's regulations governing the filing of claims for refund by submitting an analysis of costs and participating in a conference before the Commissioner at which the entire case was reviewed. See *Bethlehem Baking Co.* v. *United States,* 40 F. Supp. 936 (E. D. Pa.). The decision in the *Bethlehem* case merely approved the introduction of certain additional evidence designed to substantiate the evidence already submitted to the Commissioner. While it is true that in the instant case the court below stated, in effect, that evidence which had not first been submitted to the Commissioner could not be produced in the district court, and the Circuit Court of Appeals for the Third Circuit may be deemed to have rejected that view in its *Bethlehem Baking* opinion, this case is clearly distinguishable on its facts. It is clear from the record that the petitioner cannot produce any direct evidence to prove that it bore the burden of the tax sued for. Affidavits and correspondence filed with the District Court (R. 27–36, 46–55) indicate that the only evidence which could be offered would be unsubstantiated oral statements to the effect that the taxpayer bore

the burden of the tax. Such statements, however, would be mere conclusions. Hence, any supposed conflict with the *Bethlehem Baking* case need not be resolved here, for whatever verbal deviation may be found from the rule there enunciated, the decision of the court below would have to be affirmed.

The decision here is in accord with the same court's earlier decision in the *Samara* case. In neither case did the taxpayer submit any substantial evidence in connection with its refund claim to show that it had borne the burden of the tax. The only evidence submitted here was a schedule showing the ratio between the taxpayer's gross sales and gross profits for the years 1927 to 1935, inclusive (R. 20). There was nothing whatever to show that the reduction in the percentage of gross profits during the period that the tax was in effect was attributable to the tax. The taxpayer's failure to submit to the Commissioner such evidence as it was prepared to offer at the trial of this case cannot be excused on the ground that the Commissioner would not have accepted it as proof that the burden of the tax had not been borne. See *United States* v. *Felt & Tarrant Co.*, 283 U. S. 269.

2. This case, like the *Samara* case, also presents the question of whether the complaint should be dismissed for lack of jurisdiction rather than on the merits, but there is even less reason

for granting further review in this case to answer this question than there was in the *Samara* case, because, since the decision in that case, this Court has decided *Angelus Milling Co.* v. *Commissioner,* No. 610, October Term 1944. The decision in the *Angelus* case plainly indicates that a failure to comply with the requirements of the applicable statute and regulations (Appendix, *infra*, pp. 10–13) governing claims for refund deprives the Court of jurisdiction over a suit brought after the claim is denied.[1] Consequently any modification of the decision below by this Court could not aid the taxpayer.

Moreover, in this case, the taxpayer withdrew its claim for refund (R. 22), and that alone is a sufficient ground upon which the decision below might have been based. Finally, almost three years have elapsed since the denial of the petition for a writ of certiorari in the *Samara* case, and that very fact makes any question relating to suits for the recovery of taxes collected under the Agricultural Adjustment Act less important.

[1] Taxpayer here told the Commissioner that he was making no attempt to establish the proof necessary to sustain the claim (R. 22).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

HUGH B. COX,
Acting Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
SEWALL KEY,
HELEN R. CARLOSS,
FRED E. YOUNGMAN,
Special Assistants to the Attorney General.

JULY 1945.

APPENDIX

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 902. CONDITIONS ON ALLOWANCE OF REFUNDS.

No refund shall be made or allowed, in pursuance of court decisions or otherwise, of any amount paid by or collected from any claimant as tax under the Agricultural Adjustment Act, unless the claimant establishes to the satisfaction of the Commissioner in accordance with regulations prescribed by him, with the approval of the Secretary, or to the satisfaction of the trial court, or the Board of Review [1] in cases provided for under section 906, as the case may be—

(a) That he bore the burden of such amount and has not been relieved thereof nor reimbursed therefor nor shifted such burden, directly or indirectly, (1) through inclusion of such amount by the claimant, or by any person directly or indirectly under his control, or having control over him, or subject to the same common control, in the price of any article with respect to which a tax was imposed under the provisions of such Act, or in the price of any article processed from any commodity with respect to which a tax was imposed under such Act, or in any charge or fee for services or processing; (2) through reduction

[1] "Board of Tax Appeals (hereinafter referred to as the 'Board')" was inserted in place of "Board of Review" by Section 510 (e) of the Revenue Act of 1942, c. 619, 56 Stat. 798 (7 U. S. C. (Supp. IV) 644).

of the price paid for any such commodity; or (3) in any manner whatsoever; and that no understanding or agreement, written or oral, exists whereby he may be relieved of the burden of such amount, be reimbursed therefor, or may shift the burden thereof; or

(b) That he has repaid unconditionally such amount to his vendee (1) who bore the burden thereof, (2) who has not been relieved thereof nor reimbursed therefor, nor shifted such burden, directly or indirectly, and (3) who is not entitled to receive any reimbursement therefor from any other source, or to be relieved of such burden in any manner whatsoever. (7 U. S. C. 644.)

SEC. 903. FILING OF CLAIMS.

No refund shall be made or allowed of any amount paid by or collected from any person as tax under the Agricultural Adjustment Act unless, after the enactment of this Act, and prior to July 1, 1937,[2] a claim for refund has been filed by such person in accordance with regulations prescribed by the Commissioner with the approval of the Secretary. All evidence relied upon in support of such claim shall be clearly set forth under oath. The Commissioner is authorized to prescribe by regulations, with the approval of the Secretary, the number of claims which may be filed by any person with respect to the total amount paid by or collected from such person as tax under the Agricultural Adjustment Act, and such regulations may require that claims for refund of proc-

[2] January 1, 1940, was substituted for July 1, 1937, by Section 405 of the Revenue Act of 1939, c. 247, 53 Stat. 862 (7 U. S. C. 645).

essing taxes with respect to any commodity or group of commodities shall cover the entire period during which such person paid such processing taxes. (7 U. S. C. 645.)

SEC. 916. RULES AND REGULATIONS.

The Commissioner shall, with the approval of the Secretary, prescribe such rules and regulations as may be deemed necessary to carry out the provisions of this title. (7 U. S. C. 658.)

Treasury Regulations 96, promulgated under Title VII of the Revenue Act of 1936:

ARTICLE 201. *Claims—Form and where to file.*—Claims for the refund of tax shall be made on the prescribed forms. Such claims shall be prepared in accordance with the instructions contained on the forms and in accordance with the provisions of these regulations. * * *

ART. 202. *Facts and evidence in support of claim.*—Each claim shall set forth in detail and under oath each ground upon which the refund is claimed. It is incumbent upon the claimant to prepare a true and complete claim and to substantiate by clear and convincing evidence all of the facts necessary to establish his claim to the satisfaction of the Commissioner; failure to do so will result in the disallowance of the claim.

The provisions of these regulations require that certain specific facts shall be stated in support of any claim for refund. The claimant is privileged to prove those facts in any manner available to him and to submit such evidence to that end as he may desire.

ART. 204. *Conditions as to tax burden with respect to amount of refund allowable.*—A refund may be allowed to the person who paid the tax, only of that amount paid as tax to which the claimant establishes to the satisfaction of the Commissioner (1) that he bore the burden of such amount and has not been, or may not be, relieved thereof nor reimbursed therefor, and has not shifted such burden, directly or indirectly, through or by any of the means set forth in subsection (a) of section 902 of the Act; or (2) that he has repaid such amount unconditionally to his vendee who bore the burden thereof, as provided in subsection (b) of section 902 of the Act.

ARTICLE 301. *Claim form prescribed.*—Claims for refund of amounts paid as floor stocks tax shall be filed on P. T. Form 76. (See Chapter II for general provisions relating to all claims.)

U. S. GOVERNMENT PRINTING OFFICE: 1948